

MAY 24 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN PABLO HERNANDEZ-
SANCHEZ,

Defendant - Appellant.

Nos. 05-50747, 05-50751

D.C. Nos. CR-00-02694-IEG
CR-03-02725-IEG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted May 15, 2006 ^{**}

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

In these consolidated appeals following remand, Hernandez-Sanchez
appeals the term to which he was re-sentenced for his two separate convictions of
unlawful reentry after deportation, in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Hernandez-Sanchez contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) should be limited to situations where the defendant admits the prior conviction and subsequent deportation during a plea colloquy and that this court's case law has been effectively overruled by *Shepard v. United States*, 544 U.S. 13, (2005), and other recent Supreme Court decisions. These contentions are foreclosed. See *United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres* even though it has been called into question, unless it is explicitly overruled by the Supreme Court); *United States v. Velasquez-Reyes*, 427 F.3d 1227, 1228 (9th Cir. 2005) (rejecting contention that prior conviction must be proved to a jury if not admitted by the defendant and reaffirming that *Almendarez-Torres* has not been overruled).

We also reject Hernandez-Sanchez's contention that the enhancement was inappropriate because the government did not allege, nor did Hernandez-Sanchez admit, the date of his deportation. See *United States v. Castillo-Rivera*, 244 F.3d 1020, 1024-25 (9th Cir. 2001) (rejecting contention that the fact of the temporal relationship of the removal to the prior conviction is beyond the scope of Supreme Court's recidivism exception).

AFFIRMED.